Central Law Journal.

ST. LOUIS, MO., MAY 28, 1915.

SERVICE ON RESIDENT OFFICER OF FOREIGN CORPORATION DOING NO BUSINESS IN A STATE.

The federal supreme court reverses the Supreme Court of North Carolina in its holding that a judgment against a foreign corporation based solely on service of a resident director, the corporation carrying on no business in that state, was valid. Riverside & D. R. Cotton Mills v. Menefee, 35 Sup. Ct. 579.

The state supreme court, two of its members dissenting, arrived at its conclusion from a consideration of the cases of Goldey v. Morning News, 156 U. S. 518, and Conley v. Matthieson Alkali Works, 190 U. S. 406, planting itself on an observation in the former case and repeated in the latter, that: "Whatever effect a constructive service may be allowed in courts of the same government, it cannot be recognized as valid by the courts of any other government," and it was said that under North Carolina statute "the service is sufficient for a valid judgment, at least, within our jurisdiction." It was further observed that: "What opportunity or method the plaintiff may have to enforce his judgment is not before us now for consideration."

The Chief Justice spoke of Pennoyer v. Neff, 95 U. S. 714, often reaffirmed, as establishing the principle that it is not due process of law to condemn the resident of another state when neither his person or his property is within the jurisdiction of a court, and of its being settled by St. Clair v. Cox, 106 U. S. 350, that a foreign corporation which has not come into a state for the purpose of doing business therein, or has no property therein and has no qualified agent therein on whom process may be served, is under the protection of such principle. It was further said that this case held that the fact of there being a corporate officer in the state either temporarily or permanently, if transacting no business therein, made no difference as to the application of such principle.

But it was contended by state court that these cases merely referred to the right of enforcement of, and not the power to render, judgment, as was implied by the Goldey and Conley cases. The court in answer to this contention said: "The obvious answer to the proposition is that wherever a provision of the constitution is applicable, the duty to enforce it is imperative and all-embracing, and no act which it forbids may therefore be permitted. If the suggestion be that, although under the jurisdiction which was exerted, in form a money judgment was entered, as no harm could result until the execution, therefore no occasion for applying the due process clause arose, it suffices to say that the proposition but assumes the issue for decision, since the very act of fixing by judicial action without a hearing a sum due, even although the method of execution be left open, would be, in and of itself, a manifestation of power repugnant to the due process clause."

This argumentation is somewhat hard to follow. If a foreign corporation is without a state, but constructive service may be had upon it if it has property in a state, why may not a state statute authorize a judgment against it so it may be enforced as to ownership of property therein which may come about in the future?

The Chief Justice concedes that the cases where judgments were rendered without due process of law being observed were where attempts were made to enforce them in jurisdictions other than where they were rendered and, obviously, all that was necessary to be decided was that there the judgments had no validity. Therefore, the question raised by North Carolina court could not have been passed on.

It does, however, seem true that a court ought not to be allowed to render judgment where some one of the things spoken

of did not exist at the very time judgment was rendered. Cases like Pennoyer v. Neff said this and, though the other question was not necessarily involved, yet they were upon the theory that at the very time of rendition of judgment there existed no jurisdictional basis therefor. One's acquisition of property or subsequent carrying on of business ought not to be subject to a rule, that this will bring a judgment into force which otherwise would be void for want of jurisdiction.

This is different from bringing property into a situation where a judgment, valid on jurisdictional grounds at the time of its rendition, may be enforced. Purely cursory or accidental things, having no real relation to status at the time a judgment is rendered, ought not to interfere either with the free right of contract or the free right of removal from one state to another. Interrelations between citizens of different states ought to be encouraged rather than hampered. There, too, is a decided advantage gained by plaintiff in such a case, so far as extending the life of a debt is concerned.

NOTES OF IMPORTANT DECISIONS

BANKS AND BANKING—PAYMENT IN FORGED INDORSEMENT BINDING ON DRAWER WHERE NOT PROMPTLY OBJECTED TO.—The case of Lesley v. Ewing, 93 Atl. 875, was decided by Pennsylvania Supreme Court upon a question of estoppel wrongly, as it seems to us, applied.

The facts show that in 1907, plaintiff loaned money upon a forged mortgage giving a check for the amount payable to the supposed mortgagor. Payee's name was forged by indorsement on the check and it was collected at bank. In July, 1911, the drawer was told that the mortgage was a forgery and in October thereafter he received from the bank his cancelled checks. In December he notified the bank that the indorsement was forged. The court said he was estopped from recovering against the bank, because he had the check with the forged indorsement in his possession, with knowledge since July, 1911 of the mortgage being a forgery.

The rule as to estoppel against a depositor arising out of possession of cancelled checks is where his name as drawer has been forged. He is not supposed to know the signature of payee or of any other who indorses same. The bank on which a check is drawn has to see that indorsements are genuine.

But the court says, that the drawer having positive knowledge of the mortgage being a forgery, "he must have known that the check payable to the order of the mortgagor had been negotiated without authority."

We do not see that this is necessarily true and against its being true is the fact, that a bank knowing the signature of the drawer is bound to satisfy itself as to the genuineness of indorsements.

Further than this, it appears that drawer was ignorant of every circumstance of a fraudulent nature for four years and taking it that there was no notice to the bank for six months thereafter, this delay would not seem *prima facie* to have damaged the bank.

The rule of prejudice in such cases is applied rather as to subsequent checks than as to those already paid, e. g., where there are repeated forgeries of a depositor's name and he has recognized or made no objection against forged checks charged up against him. Here was but one check and that had been paid long before by the bank which was bound at the time to ascertain that it was properly indorsed.

There is no rule as between a bank and a depositor as to the genuineness of indorsements. The bank has every means to protect itself as to them, and no silence by a depositor can be supposed to have misled it. But, if a depositor really obtains the security for which a note with a forged indorsement was given, in such case he is estopped. Dyens v. Bank (Tex. Civ. App.) 148 S. W. 1127.

LIBEL AND SLANDER—MOVING PICTURE AS LIBELOUS.—From Merle v. Sociological Research Film Corporation, 152 N. Y. Supp. 829, decided by Appellate Division, New York Supreme Court, we learn that "a suit for libel based on a moving picture production is a somewhat novel proceeding," and that "there is no doubt that if the production tends to bring a person into disrepute it may give rise to such an action."

Under definition of libel—a malicious defamation expressed either by writing or printing, or by signs, pictures, effigies or the like"—followed by publication—a suit for such a libel

hardly might be thought to be novel, in the sense, at least, that contention of the right to bring such a suit is novel.

There might in such a suit be more difficulty in determining whether such a libel is directed solely against one personally or against his business or whether it is to be taken in both aspects, than where a libel is in written or printed words, and whether one should have more than one count in his petition when he sues for such a libel is suggested.

This case also shows that in about every case of a libel by a moving picture the surroundings have to be taken into consideration to ascertain whether there was any libel, and it is said: "Reasonable inferences which can be drawn from the picture cannot be extended by innuendo."

The case was the showing of plaintiff's name on a building in a moving picture film of a play called "The Inside of the White Slave Traffic," it being thereby indicated that at his place of business this traffic was carried on. It was thus only by association that anything of a libelous nature was inferred. A case was held to have been stated by the petition and that there was a libel against plaintiff of a personal nature.

LARCENY—DESCRIPTION OF PROPERTY.—In Graham v. State, 84 S. E. 981, decided by Georgia Court of Appeals, it was said: "While the indictment described the cow as 'one blue and white speckled' cow, this description would include equally well a cow which was black and white speckled, since it is a matter of common knowledge that, literally speaking, no cow on this mundane sphere is actually 'blue,' though cows of that color may possibly browse through the valleys of the moon, graze along the banks of the canals that seam the face of the planet Mars, or disport themselves in the realms of fairyland."

Perhaps it would have been better to have considered the words "blue and" as omitted from the indictment as being falsa demonstratio, which in law does not hurt, and by doing this a precedent might have been set for some courts which have held indictments bad for omission of "did" and "the" and such words as leave the clear intent of the indictments wholly unaffected. The Georgia court, however, while sustaining the indictment, goes into much elaboration to show that a "blue and white speckled" and a "black and white speckled" cow may be one and the same, "and a jury would be authorized so to find."

EVIDENTIAL QUALITY AND CAPACITY.

Where the result of a judicial trial depends on facts which are in dispute, the dispute (in a very general sense) may be said to be settled by the hearing and consideration of the conflicting evidence of persons claiming to have some personal knowledge of the matter in controversy; and this is done under the supervising control of a disinterested presiding judge. In such abstract case, every witness acts but in a single capacity and his acts are of but a single quality, so far as the case is concerned; usually he merely gives his recollection regarding some past event with which he was personally connected. From the combined, and perhaps contradictory, versions of the various witnesses, the jury then decides what were really the occurrences constituting such event.

Such is the simplest form of procedure, and necessarily it is frequently modified by reason of various complicating conditions, or legislative enactments, or judicial rulings, which are encountered from time to time. For instance:—One of the strangest modifications has existed in Tennessee for nearly a century past, whereby the presiding judge is a competent witness in any case being tried before himself, whether it be a civil or criminal proceeding. In one case the judge himself presented the charges against an attorney, provided the evidence to support them, and then heard, and disposed of, the consequent disbarment proceeding.[1]

The more frequent variations in the simple procedure, however, cluster around the debatable ground between the unquestioned realm of fact, on one side, and the admitted region of opinion, on the other side. The legal acceptance of an opinion finds its sole justification in the presumed possession of skill of some sort, qualifying the person to have an opinion which is entitled to consid-

(1) Re Cameron, 151 S. W. Rep. 64 (1912).

eration; such opinion must, of course, be based on specific facts derived from some source or other,—hence the chance for confusion.

In our dictionaries, "opinion" is variously defined as "A conviction founded on probable evidence," or "Belief stronger than impression, but less strong than positive knowledge." Sir Matthew Hale said "Opinion is when the assent of the understanding is so far gained by evidence of probability, that it rather inclines to one persuasion than to another, yet not without a mixture of incertainty or doubting."

In its ultimate analysis every statement of a fact is but an expression of the speaker's opinion or belief regarding certain phenomena that have presented themselves to his senses. Yet, practically, when a person says, "Smith passed me on the street today," or, "I saw a drunken man fall over a cellar-door yesterday," we accept that as a statement of fact, although he only *believes* that it was Smith, or that the man was drunk. The highest court in Georgia has even held that testimony to the effect that the deceased "*generally* laid his hat aside when he sat down for a conversation, and lit his pipe to smoke;—he *generally* laid his hat where I saw it that night," was evidence of fact, and not mere opinion.[2]

From this point to where the witness is admittedly only expressing an opinion, having but probative force as such, is a long distance. Well-defined rules govern the testimony of witnesses at each end of these extremes; and we generally find the respective witnesses testifying purely in one way or the other, so that the rules are easy of application.

Unimpeached testimony of not improbable *pure fact*, given by a disinterested credible witness, must be accepted at its face value; unimpeached testimony of the *pure opinion*, of a competent witness, need only be accepted at its face value, when the *facts* on which it is based are in some manner established, and when such opinion on those facts is believed to be reliable. Thus, in an accident case, the opinion of a doctor given in reply to a hypothetical question, is to be accepted only when the facts in the question have been found to be correct, and the opinion seems trustworthy;[3] and in a forgery case, if the papers containing the facts on which the expert opinion has been based, are later ruled out, then the expert opinion must also be stricken out.[4] The facts may have been already excluded, when offered as a basis for a non-expert opinion, and yet later be admitted as a basis for expert opinion.[5] This case turned on the sanity of the defendant, and the evidence of ordinary witnesses, as to his conduct, was ruled out because those witnesses were unable to form therefrom any opinion as to his sanity; later, however, such testimony was admitted and used, as a basis for opinions given by other witnesses who were experts.

Thus the opinion testimony must be founded on facts also in evidence, and these facts may come from a variety of sources. They may be derived from ordinary witnesses having a personal knowledge of them, from merely hearing or seeing certain events; or they may be such as are only capable of ascertainment or observation by one having a special skill in, or knowledge of, the subject matter, as in scientific questions. In the former case, the witness may be either specially trained in the particular line of investigation, or he may be entirely untrained therein; in the latter case the witness must of necessity be an expert therein, by training or practice; but, in both cases, the testimony is of *fact* and subject to the rules governing such evidence, both as to the responsibility resting on the witness and the weight to be given to his statements.

That this view is correct may be gathered from various extra-judicial utterances

(2) Butler v. State, 82 S. E. Rep. 654.

(3) Landskron v. Graber, 29 M. C. L. R. 174 (1913).

(4) Shannon v. Castner, 21 Pa. Sup. Ct. 294 (1902).

(5) Comh. v. Fleming, 17 Dauph. 154.

of two most eminent Pennsylvania jurists,—Judge Penrose, of Philadelphia, and Judge Endlich, of Reading; it is also tacitly recognized by the Pennsylvania Supreme Court.[6] In this connection the real test is, the *substance* to which the witness *testifies*, and not merely the *form* in which he *qualifies* as a witness;—*what* he actually says, and not merely *why* he was enabled to say it.

The facts having been gotten in evidence, the next step (in a proper case) is the receiving of opinions of competent witnesses, based on such facts. It is strange, but yet true, that the law inconsistently accepts pure opinion evidence from both skilled and unskilled, expert and non-expert, witnesses; the principal distinction is that the non-expert must also furnish his own facts, while the expert may or may not do so. This difference at once brings us face to face with a mixed, or dual, evidential capacity, which question can be most profitably examined from the standpoint of a single line of judicial inquiry,—e. g., the broad ground of a disputed writing.

In 1862, Judge Woodward of the Pennsylvania Supreme Court, attempted to review and reconcile the many and conflicting Pennsylvania decisions on proof of handwriting, and as a result concluded that (a) Non-experts who produced their own facts,—to-wit, their personal knowledge of the party's handwriting,—could then give their opinions whether or not the disputed writing was by such party, but could not compare genuine writings with the disputed, and give their opinions thereon. (b) Experts could give their opinions as to whether or not the disputed writing was forged or simulated, but could not compare same with any genuine writings and give an opinion thereon; if such witnesses had any personal knowledge of the party's handwriting, they were thereby disqualified from giving expert opinions. As the experts could make no comparisons, they of course could ascertain or present no facts, but only their bare conclusions of scientific skill.[7] And under this case, the determining comparison could only be made by the jury.

Although much of the opinion in Travis v. Brown was mere dictum, the inferior Pennsylvania courts quite generally accepted its reasoning for many years,—probably more because of its convenient codification of conflicting prior decisions into a few simple general rules, than because of its binding authority. But when the appellate courts were brought face to face with the reasoning contained in the dictum, the dictum has had little, if any, weight given to it, as affecting expert testimony in cases involving either handwriting or other matters.

A witness may state *facts* within his personal knowledge or observation, and then (if competent) give his *expert opinion* on those facts; or his opinion may be based on those facts, taken in conjunction with facts testified to by other witnesses.[8]

The Pennsylvania Act of May 15, 1895, P. L. 69, (amended June 6th, 1913, P. L. 451), permits experts to make comparisons between genuine and disputed writings, and to state the details of their work to the jury. This Act enables the expert first to ascertain, through his skill, numerous data to be gained only by comparison of the writings—*all facts;* and second, to place those *facts* before the jury; and third, to formulate and base a technical *opinion* upon those facts. While the jury is still left as the arbiter of *disputed* facts and opinions, the Act does not leave to the jury, for decision merely by *its own comparison* of the writings, the question of handwriting involved; this must be determined by all the evidence in the case.

(6) Comh. v. Buccieri, 153 Pa. St. 537, and Olmsted v. Gere, 100 Pa. 127. See also Abbott's Civil Trial Brief, p. 391.

(7) Travis v. Brown, 43 Pa. St. 9.

(8) Olmsted v. Gere, 100 Pa. St. 127; Comh. v. Buccieri, 153 Pa. St. 537 (1892); Berkley v. Maurer, 41 Pa. Sup. Ct. 171 (1909).

As Judge Endlich said in 1897:[9] "Where from the facts so stated, the drawing of the inference requires special knowledge, the inference is then to be drawn not by the jury, but by an expert witness. In such case the expert inference may be drawn from facts admissible even in the absence of expert testimony, or from facts which would have no significance at all for the jury in the absence of expert testimony and therefore admissible only as laying ground for the expert testimony."

It is reversible error for the trial judge to so charge the jury as to give the jurymen the impression that a disputed question of handwriting may be determined by them from a comparison of the handwriting made by themselves, and from that alone.[10]

Consequently, whether it were then correct or not, as stated in 1862, in Travis v. Brown, that "an expert speaks from no knowledge of the particular facts which he may happen to possess, but is to pronounce the judgment of skill upon the particular facts proved by *other* witnesses," and that the question is to be finally settled by a comparison made by the *jury alone*, such is not now the law in Pennsylvania.

There, and now, a writing may be proven by three varieties of testimony: 1. By the evidence of *any* witness who actually saw it written and who therefore testifies entirely to *fact;* or 2. By the evidence of *any* witness who had theretofore become acquainted with other handwriting of the supposed writer, whereby he is in a position to be more or less able to recognize it when he sees it, although he did not actually see the questioned writing done; in which case his testimony as to his acquaintance, is of *fact*, while his evidence as to the authorship of the writing in dispute is merely *opinion;* or 3. By the evidence of such witnesses as are termed by the Act of Assembly "experts," who base their ultimate opinions upon data gathered by them from a skilled examination or test of the writing in dispute, or from a skilled comparison of such writing with others admitted to be genuine. In such cases, the statement by the witness of the details of his examination or comparison, and of his data, is all evidence of pure *fact*, while his statement of his final conclusion (based on such data) is pure *opinion*. In testifying to such facts, the witness speaks as an ordinary witness though only his scientific knowledge has taught him how to ascertain those facts; but in expressing his opinion based on such facts, he speaks technically only as an expert.[11] Some of the facts so stated may be visible in the writing to the jury, while others may only be observable by the skilled use of suitable instruments; yet *all* are equally facts when stated by the witness.[12]

It will thus be seen that a *non*-expert who is merely "acquainted" with the general hand of the person whose writing is in question, testifies in a dual capacity,—i. e., partly to fact, and partly to unskilled opinion, the quality being generally very weak along both lines, by reason of the lack of intelligent acquaintance on the part of the witness, and of the necessity for him to rely upon something intangible for assistance, viz.,—a more or less imperfect memory.

When the proof is by an *expert* witness, he, too, acts in a distinctly two-fold capacity, giving his data as an ordinary, though skilled, witness to facts, and his opinion as a true technical expert. Under the dictum expressed in Travis v. Brown, such witness could only state his *opinion*, and not that if he had any personal knowledge—however derived—of the admitted handwriting of the party in question; now, however, he may not only testify to both the facts and his opinion thereon, but he may do so even though he also had a prior personal ac-

(9) Frazer's Bibliotics, 3rd ed., p. 242.

(10) Shannon v. Castner, 21 Pa. Sup. Ct. 294 (1902).

(11) See letter of Judge Penrose, of Philadelphia, published in American Law Register for June, 1902.

(12) Koons v. State, 36 Ohio 195; Riordan v. Guggerty, 74 Iowa 688.

quaintance with the general handwriting of the party in question; in fact he may now (if competent) testify in a four-fold capacity:—as a non-expert "acquaintance" witness to fact and then to opinion, and as an expert witness to the scientific facts and then to his scientific opinion thereon.[13]

The importance of bearing in mind the distinctions among the several sorts of capacity, lies in the different rules of law governing (a) the weight to be given to testimony of fact on the one hand, and to mere opinion on the other hand, and (b) the degree of responsibility—as to perjury—under which each kind of testimony is given. An observance of these distinctions definitely, and with good reason, raises the standard of all such evidence.

Of course, "acquaintance" with the handwriting of the supposed writer is not to be gained from a course of instruction given to the witness in anticipation of, and to prepare him for, giving such testimony in the particular case. In other words, it must not be derived from a premeditated and designed exhibition of the act of doing such writing, given at or about the time of the trial; the "acquaintance" must have been had prior to, and outside of, the circumstances of the immediate controversy.[14]

With regard to the *quality* of the testimony given by *experts*, it is to be remembered that the Pennsylvania Act of 1895, ante, defines experts as (a) "those who have had special experience with" or (b) "who have pursued special studies relating to," writings, etc. This creates a double classification, and a given witness may be found to be in either or both classes. If only in the first class,—as in the case of the average bank teller or cashier,—the quality of the evidence is lowered; if in both classes, then the quality is materially raised. This difference rests not on relative integrity, but on the bases of their respective mental processes in considering the question.

Most bankmen's opinions concerning signatures on papers presented to them in the regular course of business, depend, very slightly, on a species of intuitive recognition of the signatures, and, slightly more, on the appearance and behavior of the person presenting the signature and the probability of the transaction, but, principally, on either the *identification* of the individual bringing in the paper, or the *guaranty* of the signature by the bank presenting the paper. This condition can give rise to but a frail claim to expertness with regard to anybody's handwriting; and outside of this their claim thereto rests only on the fact that *many* signatures of *many* people pass under their notice. Mere *numbers* cannot bestow special skill, otherwise the poor laborer who merely carried mortar or bricks up a scaffolding would, of course, be an expert in such building materials.

On the other hand, if the witness had not only handled much writing, but had also made a careful and extended study or investigation of writings, as such, it is but natural that his judgment concerning a given writing would rest on a broad foundation contained in the very writing itself, and dissociated from all extraneous circumstances and conditions. Such a witness would judge the writing by itself alone, and on some definite and ascertainable basis, independently of mere surmise or intuition.

Therefore, the evidential capacity of a given witness while testifying in a given case, may continue as it began, or it may shift around from time to time, from that of non-expert to expert witness, and from that of a witness to fact to one merely giving an opinion. The quality of the testimony may also vary, according to the circumstances of the particular witness.

WEBSTER A. MELCHER.

Philadelphia, Pa.

(13) Berkley v. Maurer, 41 Pa. Sup. Ct. 171 (1909).

(14) Berkley v. Maurer, ante. And see Reese v. Reese, 90 Pa. St. 89.

ATTORNEY AND CLIENT—PRACTICE OF LAW BY CORPORATION.

L. MEISEL & COMPANY, Plaintiff-Respondent, v. NATIONAL JEWELERS BOARD OF TRADE, Defendant-Appellant.

Supreme Court of New York, App. Div. April 28, 1915.
152 N. Y. Supp. 913.

A membership corporation organized as a Board of Trade "for purposes other than pecuniary profit," has not the right to represent a creditor in a bankruptcy proceeding, or to appear on behalf of a creditor in the matter of the general assignment of a bankrupt for the benefit of creditors, or to advise a creditor in such proceedings, or to do the things appertaining to the prosecution of the creditor's claim, or protection of his interests in such proceedings, making a charge for such services. Such services constitute legal services.

SHEARN, J. This case presents for determination a question which has been very generally discussed during the past year, namely, what amounts to the practice of law on the part of a corporation. The respondent Meisel, doing business under the name of L. Meisel & Company, went to the office of the appellant, the National Jewelers Board of Trade (a New York membership corporation), in 1913, and asked it to collect a claim which he had against one F. W. Wedgren, who was in bankruptcy. Respondent was informed that Wedgren was in bankruptcy and that it would be necessary for him to file a claim in bankruptcy with the appellant to enable it to collect the claim. Respondent was instructed to bring to the appellant the notes representing the claim, together with a statement of his claim, which he did. Then the appellant gave Meisel certain papers to sign, which were prepared in its office. These papers were a proof of Meisel's claim in bankruptcy. Thereafter the appellant sent to Meisel a check for $6.76, which purported to be the amount collected on his claim, less $3, charged and retained by the Board of Trade for its services. Meisel did not cash the check and offered to return it to the Board of Trade on the trial, which offer was refused.

Meisel also had a claim against a concern known as the Pacific Jewelry Company and went to see the Board of Trade in regard thereto and requested it to collect the claim. The representative of the Board of Trade asked Meisel to make him a statement of his claim, which he did. The claim was upon past due promissory notes, which Meisel brought to the Board of Trade and left with it. The Board of Trade informed Meisel that the Pacific Jewelry Company had made an assignment for the benefit of creditors. Meisel signed certain papers which the Board of Trade prepared for him, but could not recollect their nature or contents. Subsequently the Board of Trade sent its check to Meisel for $28.06, representing the amount collected by it from said bankrupt, less $3.20 fees. Plaintiff did not cash the check, but tendered it to the Board of Trade on the trial, the tender being refused. At the time of the transactions Meisel was not a member of the Board of Trade.

That the practice of law by a corporation is contrary to public policy and malum in se has been decided by the Court of Appeals (Matter of Co-operative Law Co., 198 N. Y., 479). The sound reasons for so holding were fully and convincingly stated therein by Judge Vann (pp. 483-4) and need not be repeated. That the practice of law by a corporation is malum prohibitum is obvious upon a mere reading of Section 280 of the Penal Law.

In determining whether the transactions herein disclosed constituted the practice of law and the furnishing of legal services by the Board of Trade, a sensible and sufficient definition is found in Re Duncan, (1909, 83 S. C. 186, p. 189), 65 S. E. 210.

"It is too obvious for discussion that the practice of law is not limited to the conduct of cases in courts. According to the generally understood definition of the practice of law in this country it embraces the preparation of pleadings and other papers incident to actions and special proceedings on behalf of clients before judges and courts, and in addition conveyancing, the preparation of legal instruments of all kinds, and in general all advice to clients, and all action taken for them in matters connected with the law. An attorney at law is one who engages in any of those branches of the practice of law. The following is a concise definition given by the Supreme Court of the United States: 'Persons acting professionally in legal formalities, negotiations or proceedings by the warrant or authority of their clients may be regarded as attorneys at law within the meaning of that designation, as employed in this country' (Savings Bank v. Ward, 100 U. S. 195).

"Under these definitions there can be no doubt that Duncan engaged in the practice of law."

Thornton on Attorneys at Law, in Section 69, defines the practice of law in the same terms. In Eley v. Miller, (7 Ind. App. 529, 535), the court, while stating that, as generally understood, the practice of law is the doing

or performing services in a court of justice, in any manner depending therein, said: "But in a larger sense it includes the legal advice and counsel, and the preparation of legal instruments and contracts by which legal rights are secured, although such matter may or may not be depending in court."

That the definition of what constitutes the practice of law stated in Re Duncan, supra, should and will be accepted and applied by the courts in this state is clearly indicated by the cases of Matter of City of New York, 144 A. D. 107, Matter of Bensel, 140 A. D. 944, Aff'd. 201 N. Y. 531; Buxton v. Lietz, 136 N. Y. Supp. 829, 139 N. Y. Supp. 46.

Now, consider the services ordinarily incident to representing a creditor and enforcing his claim in bankruptcy matters, such as the Wedgren case herein involved. The promissory notes required examination as to execution and the form of the signature, i. e., whether the maker was liable in an individual or representative capacity, whether signed in a trade name as distinguished from an individual name, etc. Inquiry was necessary concerning the inception and delivery of the notes, whether for value or accommodation, and as to any possible defenses, or counterclaims. Acting on this information, the client would be advised whether to proceed. The next step would be the preparation of proof of claim. This is a legal instrument, and the mere fact that it is on a printed form and might be filled out by a layman does not change its character any more than the fact that confessions of judgment, bills of costs, affidavits of service and many simple forms of pleadings on notes and for goods sold and delivered are frequently printed changes their character. The subsequent steps that ordinarily occur, such as joining with one or another group of creditors in the selection of a trustee, expediting or opposing the disposition of the assets of the bankrupt estate, the consideration of proposed compromises, reorganizations and substitution of securities for claims, the various problems incidental to receivership, the form in which dividends are received and receipted for, and innumerable other details intervening between the filing of the petition in bankruptcy and a discharge, all involve at one stage or another proceedings on behalf of the client in courts, the preparation of legal instruments of various kinds, the rendition of legal advice and action taken for the clients in matters connected with the law. These services require special knowledge, the fidelity of the relation between attorney and client, responsibility to the courts and, for success, experience in what is generally recognized as a special line of legal work. Frequently the relation requires actual appearance in court and the conduct of litigation. That such proceedings are contemplated and provided for by this board of trade in its relations to its clients is shown by its printed form of voucher, containing provision for "costs," "suit fee" and "fees." That the services involved and contemplated by this board of trade in representing plaintiff in the bankruptcy of Wedgren and prosecuting his claim therein were legal services seems too plain to require further consideration. Similarly, in representing him and prosecuting his claim against the Pacific Jewelry Company, whose property was in the hands of a general assignee for the benefit of creditors, the services were legal services, and for the most part similar in kind to those already enumerated. Ordinarily, a proper representation of the creditor in such matters involves an examination of the assignment, consideration of its validity, the sufficiency and form of the assignee's bond, an examination of schedules, alertness against the allowance of improper claims, keeping track of suits brought by and against the assignee, the accounting, and a multitude of other important details that will at once occur to any practicing lawyer.

Appellant cites Matter of Associated Lawyers Co., 134 A. D. 350, as holding that a corporation can act as a collection agency. The court did not so hold. That was an application made under Section 280 of the Penal Law for the approval by the court of the petitioner under the provision that the prohibitions of the section should not "apply to organizations organized for benevolent or charitable purposes, or for the purpose of assisting persons without means in the pursuit of any civil remedy, whose existence, organization or incorporation may be approved by the appellate division." The court said :

"It seems to us quite evident that the only authority given to this court is to approve 'organizations organized for benevolent or charitable purposes, or for the purpose of assisting persons without means in the pursuit of any civil remedy.' While it has never been legal for a corporation to practice law, a system has grown up by which corporations undertake to procure attorneys for the transaction of the law business of its clients, and while the legality of such corporate action has been doubted, the impropriety of allowing corporations to enter into such business has been universally recognized and by this legislation it has been prohibited. * * *

"We think, therefore, that the granting of this application would be entirely ineffective to allow the petitioning corporation to disobey the provisions of this section and that the court is given no authority to authorize it to continue to perform any act which this statute prohibits."

Accordingly, the petition was denied. It is true that the court added at the end of the opinion the statement that "it is quite clear that, so far as the business of this corporation is confined to the collection of claims without legal proceedings, it is not affected by this statute." This was obiter and unnecessary to the decision. It is by virtue of this dictum that appellant claims that it has been held that a corporation can act as a collection agency. The foregoing statement of the case shows that it was not so held in that case. Even if it had been so held, it would not affect the decision here, for, as has been shown, the services rendered in representing creditors in bankruptcy proceedings and in matters of general assignments for the benefit of creditors are legal services rendered in connection with legal proceedings. All that can be claimed for the dictum is that the court intimated, by way of obiter, its opinion that the mere sending out of dunning letters by a corporation does not constitute a violation of Section 280 of the Penal Law. Furthermore, it is to be doubted that the court would so decide if that question were squarely and properly presented. When it is considered that the corporation that undertakes the collection of claims without suit is generally intrusted with the evidences of debt, with transcripts from its client's private books, with access to its correspondence; and, further, that the statement of the case made by the client involves disclosures which are of a nature that ought to be privileged; when it is considered that the dunning letter is ordinarily preliminary to a suit carried on by a disguised attorney acting as the employe of the corporation; and, finally, when it is realized that the moneys collected belong to the client and ought to be subject to court orders in summary proceedings, there is a good deal to be said in favor of holding that the operation of a collection agency, with or without legal proceedings, constitutes the practice of law. When that case arises good and sufficient reasons for the courts so holding will be found in the address on the subject delivered by Mr. Charles A. Boston before a national association of lawyers in 1913 (see American Legal News, August, 1913, page 15); the report of the committee on professional ethics of the American Bar Association, for 1914; the address by Hon. George W. Wickersham, made recently before the Bar Association of Chicago (see N. Y. Law Journal, November 25, 1914); the brief submitted by the committee on unlawful practice of the law of the New York County Lawyers Association, in the Matter of the Application of Charles L. Apfel v. National Jewelers Board of Trade, before the attorney-general; and the report of the attorney-general in the Matter of Charles L. Apfel for the institution of an action to vacate the charter and annul the corporate existence of the National Jewelers Board of Trade, reported in the New York Law Journal, September 14, 1914. It suffices to say here, that we are not dealing with a mere matter of sending out dunning letters, and that the Matter of Associated Lawyers Co., supra, has no application.

NOTE.—*Practice of Law or Medicine by Corporations.*—The American Bar Association, not in any spirit of protection of the profession of law from a pecuniary standpoint, but in furtherance of ideals pertaining to the proper administration of justice, has fought participation in the practice of law by such, as either have little conception of its moral obligations, or can in no way take upon themselves its duties of trust and confidence.

Like the profession of medicine, the profession of law comes under the police power of the state, but it is a mistake to suppose that the exertion of this power finds its sole end and justification, as to the former, in protection of the health of the people, or as to the latter in the securing of orderly procedure in the courts and the consequent saving of expense. There is yet a higher purpose to be subserved, which is just as patently within that power.

With the physician the condition of the possession of moral character is the condition of his applying for the benefit of his patients the remedies of which his license to practice presumes a knowledge, and universal psychology teaches that confidence in that character is a potent aid to their beneficial effect.

With an attorney at law moral character is designed to make an officer of the court its faithful servitor and to inspire in those seeking his services respect for the court and ready obedience to its decrees.

In both professions moral character is the personal attribute that gives security to the seal of confidence, where confidence is necessarily imposed. Just as a physician rarely may give to his patient benefit of his best skill, unless every matter that may affect diagnosis is revealed, so the lawyer must know the secret springs of action to understand his client's case. If a suspicious patient or a distrustful client calls on him from whom he seeks relief or assistance, he must confide in him as fully as the exigency demands, or his recourse may prove but a delusion and a snare.

It must, therefore, be thought that, if the police power exerted itself only in so far as it put it in the power of one duly qualified by

knowledge to practice law or medicine, and yet made no requirement as to personal character, it would be riding to a fall, so far as beneficent results were concerned. Implicitly, it would be denying intimate relations in life upon which true progress is built and the only success worth prizing is achieved. In addition, it would be to cabin and confine influence of the intellectual accomplishments it requires its servants to possess.

We might go on an argue that such a partial exertion of police power would tend even to dwarf intellectual vigor and ambition for research and study, but this is unnecessary, and by thus philosophizing we might seem to be looking to the individual benefits of the public's servants.

These views seem to be supported by text writers, as see Robbins on Advocacy, Sections 9 and 10, and by many decisions made independently of any statute specifically directed at corporations entering these fields of activity.

Thus, it has been said that: "While a corporation is in some sense a person and for many purposes can be so considered, yet it is not such a person as can be licensed to practice medicine." State Electro Medical Institute v. State, 74 Neb. 40, 103 N. W. 1078, 12 A. & E. Ann. Cas. 673.

This case cited Underwood v. Scott, 43 Kan. 714, 23 Pac. 942, as saying: "The practice of medicine may be said to consist in three things: first, in judging the nature, character and symptoms of the disease; second, in determining the proper remedy for the disease; third, in giving or prescribing the application of the remedy to the disease." Then it says: "There was no necessity of legislation to prohibit corporations, as such, from practicing medicine. It is impossible to conceive of an impersonal entity 'judging the nature, character and symptoms of the disease,' or 'determining the proper remedy,' or giving or prescribing the application of the remedy to the disease. Members of the corporation, or persons in its employ, might do these things, but the corporation itself is incapable to do them. The qualification of a medical practitioner is personal to himself."

While these principles must be admitted to be sound, yet it was held that a corporation might be formed by licensed physicians and it could make contracts for services of physicians to be rendered and collect therefor. This seems to us a most illogical conclusion and against the underlying principle of what is declared by the case. If the right to practice medicine is personal, it is because there is a confidence and a trust in the personality which must be independent, or it is no trust worthy of the name. Besides, if it is a personal trust, it is against public policy to farm it out, so to speak, and certainly this could not be in accordance with ethical view. Do you not endanger what is by the requirement of a license intended to be protected—public health—when a personal trust is made subordinate to a corporation's contract?

Had the court in this case adhered to the underlying reasons in Langdon v. Conlin, 67 Neb. 243, 93 N. W. 388, where an agreement between an unlicensed person and an attorney for the former to make a contract for his being counsel in a case was declared against public policy, instead of trying to distinguish it away, it better would have acquitted itself. It was said in that case that: "The recognition of contracts of this character would be the introduction of all sorts of fraud and deception in proceedings before courts of justice."

But might not allowing another to control the services and contracts of physicians, at least where the latter are executory, be fraught with danger to health and the violation of confidence reposed in physicians?

New York law authorizes hospitals, etc., organized as corporations to diagnose, treat, operate and prescribe for diseases in the hospital, and it was said such a statute was valid. People v. Woodbury Institute, 192 N. Y. 454, 85 N. E. 697. But this does not touch the question of public policy as to patients not in such institutions. This distinction was stressed by N. Y. Supreme Court in Appellate Division, same case, 124 N. Y. A. D. 877, 109 N. Y. Supp. 578. It was said, "corporations may practice medicine by providing accommodations for patients and facilities for their care and treatment and physicians and surgeons to administer to them," but not otherwise. But though it was held illegal and *ultra vires* for a corporation to carry on the business of dentistry, this did not absolve it from liability for a tort committed by a dentist in its employ. Hannon v. Siegel-Cooper Co., 167 N .Y. 244, 60 N. E. 597, 52 L. R. A. 429.

It was said in Matter of Co-operative Law Co., 198 N. Y. 479, 92 N. E. 15, 32 L. R. A. (N. S.) 55, that: "A corporation can neither practice law nor hire lawyers to carry on the business of practicing law for it, any more than it can practice medicine or dentistry by having doctors or dentists to act for it," and we take it that all of these are put on the same plane in this regard, but this case referred only to practice of law and we will see what its reasons were for the above announcement.

The court spoke of this right being "limited to a few persons of good moral character, with special qualifications, ascertained and certified after a long course of study," in which must be "taken an oath of office," and they are "subject to the court's discipline," and to "conditions that cannot be performed by a corporation," and "as it cannot practice law directly, it cannot indirectly by employing competent lawyers to practice for it, as that would be an evasion which the law will not tolerate."

Further, it was said, employment of the corporation would destroy privity between lawyer and client "and he would not owe even the duty of counsel to the actual litigant. * * * His master would not be the client, but the corporation, conducted it may be wholly by laymen, organized simply to make money and not to aid in the administration of justice, which is the highest function of an attorney and counsellor at law. * * * The degradation of the bar is an injury to the state."

What is the practice of law is well discussed in the instant case and it is to be noticed that reliance is placed for the conclusion drawn by it, not on the statute aimed at corporations, but to decided cases in which no such statute was considered. The New York law was aimed at an evil that had grown up in the business world, and we will content ourselves with quoting Re Duncan, 83 S. C. 186, 65 S. E. 210, which is referred to. It was said in a case where a disbarred attorney was proceeded against, that:

"According to the generally understood definition of the practice of law in this country, it embraces the preparation of pleadings and other papers incident to actions and special proceedings and the management of such actions and proceedings on behalf of clients before judges and courts, and in addition conveyancing, the preparation of legal instruments of all kinds, and in general all advice to clients and all action taken for them in matters connected with the law. An attorney at law is one who engages in any of these branches of the practice of law."

It may be that in many things there do not spring up between the patron who gives business to be attended to and the one engaging to attend to it apparently any other than a purely business relation like that of principal and agent. But statutes condemning the practice of law by corporations ought to be taken in the sense such phrase is understood to have when the disciplining of an attorney at law may be invoked. Transactions, which in their nature might call for professional skill or entail professional confidence, should be taken as forbidden. Thus, the instant case speaks of collection agencies. Many collections in their line merely involve industry and persistence, while others might call for expert legal knowledge in their proper handling. If an agency holds itself out to attend to every transaction in collection of claims, it ought to be deemed as holding itself out to practice law. If it is a corporation it cannot do this. C.

ITEMS OF PROFESSIONAL INTEREST.

BAR ASSOCIATION MEETINGS FOR 1915—WHEN AND WHERE TO BE HELD.

Alabama—Montgomery, July 9 and 10.
Arkansas—Ft. Smith, June 1 and 2.
California—San Francisco, August 23.
Florida—Atlantic Beach, July 23 and 24.
Georgia—St. Simon's Island, June 3, 4 and 5.
Illinois—Quincy, June 11 and 12.
Indiana—July 7 and 8.
Iowa—Fort Dodge, June 24 and 25.
Kentucky—Frankfort, July 8 and 9.
Maryland—Cape May, N. J., July 7, 8 and 9.
Minnesota—St. Cloud, August 5, 6 and 7.
Montana—Billings, August 13, 14 and 15.
New Jersey—Atlantic City, June 11 and 12.
North Carolina—Asheville, August 2, 3 and 4.
Ohio—Cedar Point, July 6, 7 and 8.
Oregon—Portland, August 23, 24 and 25.
Pennsylvania—Cape May, N. J., June 29, 30 and July 1.
South Dakota—Watertown, September 1, 2 and 3.
Tennessee—Chattanooga, June 24 and 25.
Texas—San Antonio, July 1, 2 and 3.
Washington—Portland, Ore., August 23, 24 and 25.
Wisconsin—Superior, July 14, 15 and 16.

CORRESPONDENCE

PROGRAM OF MEETING OF ARKANSAS BAR ASSOCIATION.

Editor Central Law Journal:

I am in receipt of your favor of May 10th. The formal program for the Bar Association Meeting has not yet been prepared, however, the following will probably be sufficient for your purposes:

The Bar Association of Arkansas will meet in Fort Smith, June 1 and 2. Judge Jacob Trieber, president of the association, will deliver an address on "The Federal Employer's Liability Act." Hon. Peter Meldrim, president of the American Bar Association, of Savannah, Ga., will address the association. The following are the other papers on the program: S. H. Mann, Forrest City, "Recent Important Legislation." Judge Chas. D. Frierson, Jonesboro, "A Fundamental Difference in Viewpoint Between Law and Equity as Illustrated by two Maxims." Mr. H. P. Hatchett, Jonesboro, "Void Tax Sales in Arkansas." The balance of the time will be taken up with committee reports, etc. Indications are that there will be a large attendance.

ROSCOE R. LYNN,
Little Rock, Ark. Secretary.

BOOK REVIEWS

REEDER ON VALIDITY OF RATE REGULATIONS.

This book by Mr. Robert P. Reeder of the Philadelphia bar, deals with the principles of constitutional law which are involved in rate regulation. This is a large subject proposed to be treated in a broad way, as the headings in its nine chapters indicate. Though the work appears to have been completed in October, 1913, we have greatly advanced in decision since then.

The commerce clause is considered, so far as it puts an implied restraint on state legislation, the distinction between local laws affecting and those regulating interstate commerce and many other distinctions recognized and treated in decision.

The text of the work is not confined to a mere statement of what decisions show, but general discussion under the constitution and upon the decisions is also indulged in. This text is terse but not of the terseness shown in mere tabulation of principles announced in decision, and its

forcible presentation of those large questions makes an interesting work.

The book is bound in law buckram, the typography and paper are excellent and it issues from the publishing house of T. & J. W. Johnson & Co., Philadelphia, 1914.

CLARK ON CONTRACTS, THIRD EDITION.

The third edition of Clark on Contracts is by Mr. Archibald H. Throckmorton, Professor of Law, Indiana University. It is a careful revision of both text and notes of this well-known book, the first edition of which appeared in 1894, and the second ten years later, and now at the end of the third cycle of years appears the present edition. This book in one volume is a very thorough book and the chapters follow logically from definition of contract to principles appropriate to its discharge. The text is concise, accurate and well supported by decision, and the book should be of great practical benefit to student and practitioner. It is included in the Hornbook series so popular among the publications by the house from which it emanates.

This volume is in the best style of typographical art, is bound in law buckram and is published by West Publishing Company, St. Paul, Minn., 1914.

BOOKS RECEIVED

Handbook of the Law of Contracts. By Wm. L. Clark, Jr. Author of Clark's Handbook of Criminal Law, Clark's Handbook of Corporations, etc. Third Edition, by Archibald H. Throckmorton, Professor of Law, Indiana University. Price, $3.75. St. Paul. West Pub. Co., 1914. Review in this issue.

Essentials of the Law in Two Volumes. Vol. I, Blackstone; Volume II, Elementary Law. A Review of Blackstone's Commentaries, with Explanatory Notes for the Use of Students at Law. Second Edition. By Marshall D. Ewell, LL.D. Late President and Dean of the Kent College of Law, of Chicago; author of "Ewell on Fixtures," etc. Price, $4.50. Albany, N. Y. Matthew Bender & Co., 1915. Vol. I received. Review will follow.

Handbook on the Law of Bailments and Carriers. By Armistead M. Dobie, Professor of Law in the University of Virginia. Author of Dobie's Casebook on Bailments and Carriers. Price, $3.75. St. Paul. West Pub. Co., 1914. Review will follow.

HUMOR OF THE LAW

A policeman whose evidence was taken on commission, deposed: "The prisoner sat upon me, calling me an ass, a precious dolt, a scarecrow, a ragamuffin, and an idiot." And, this being the conclusion of his deposition, his signature was preceded by the formal ending: "All of which I swear is true."—Law Students' Helper.

Some people might say that the Birmingham Age-Herald suggests a cruel suspicion in this colloquy:

"Professor Diggs likes to use high-sounding phrases."

"A mere affectation, no doubt."

"No. I rather think he uses such phrases because he's afraid that if people knew what he was talking about they'd know he didn't know what he was talking about."

At a trial in Macon recently a negro was on the witness stand, says the Times-Democrat. He testified that a man who had been knocked down lay on the ground five minutes, and the opposing lawyer challenged the statement. To test the accuracy of the witness he took out his own watch and asked the negro to tell him when five minutes was up. The negro told him correctly. As he was leaving the courtroom the lawyer caught up with him.

"Plum," he said, "I'll forgive you if you'll tell me how you did it."

'Yes, boss," said the negro. "Ah jus' figured it out."

"Figured it out?"

"Yes, sah, by de clock on de wall behine you."

If brevity is the soul of wit, Judge Taylor, K. C., has not many rivals among his judicial brethren. Summing up a case at Liverpool which lasted several hours, he said no more than this: "Gentlemen, you have heard both sides. It is for you to say which you believe." Often enough this is all that judicial summings up amount to, but few judges have the courage to sum up so summarily. Even this does not represent Judge Taylor's best effort in the way of saving his breath. A few years ago he delivered himself of what is supposed to be the shortest summing up on record. He turned to the jury, raised his eyebrows inquiringly and remarked: "Well, gentlemen?" The art of brevity could no further go.—Dundee Advertiser.

WEEKLY DIGEST

Weekly Digest of ALL the Current Opinions of ALL the State and Territorial Courts of Last Resort, and of all the Federal Courts.

1. **Accord and Satisfaction**—Guarantor.—Where a creditor sent to a guarantor an erroneous statement of the amount due, and accepted a check made by a third person in payment, and returned the statement receipted, there was no accord and satisfaction.—Barber Asphalt Paving Co. v. Mullen, Mass., 107 N. E. 978.

2. **Adverse Possession**—Defined.—Where one does not inclose any part of the land, but merely cultivates small parts of it, different each year, and some years cultivates none, for want of water, the possession is not continuous.—Stevens v. Pedregon, Tex., 173 S. W. 210.

3.——Mistaken Boundary.—Mere possession up to a mistaken line, without claim of right or ownership beyond the true line, is not adverse possession and will not work a disseisin.—Skansi v. Novak, Wash., 146 Pac. 160.

4.——Paying Taxes.—A donee of a grantee in a deed absolute in form, yet a mortgage, who takes with knowledge, does not, by possession and payment of taxes for seven successive years, acquire any additional rights.—Hawkins v. Elston, Colo., 146 Pac. 254.

5. **Alteration of Instruments**—Condition.—Where plaintiff borrowed from W, giving notes and assignments of a life insurance policy, W's alteration of the notes, avoiding them, and his subsequent sale of them to defendant, held not to render plaintiff liable to defendant for the amount received from W as a condition of enforcing surrender of the notes and policy.—Stone v. Sargent, Mass., 107 N. E. 1014.

6.——Spoliation.—Where broker by mistake took note for less than the price, and after delivering the papers to his principal changed one figure, but was prevented from making further changes, held that this was not an alteration, but rather a spoliation by a stranger to the paper.—Bank of Flat River v. Walton, Mo., 173 S. W. 56.

7. **Aliens**—Head Tax.—Where two alien seamen at New York did not sign articles for the return voyage, but continued to follow their occupation as seamen, the steamship company was not liable for the head tax imposed on aliens by Act Feb. 20, 1907, and Immigration Rule 1, subd. 3.—United States v. International Mercantile Marine, U. S. D. C., 219 Fed. 328.

8. **Animals**—Running at Large.—Under Rev. Codes, §§ 1881, 1883, making it unlawful to permit rams to run at large during a specified season, the permitting to run at large constitutes the offense, and not alone the running at large.—Ball Ranch Co. v. Hendrickson, Mont., 146 Pac. 278.

9. **Assault and Battery**—Indictment.—On a trial for assault with a deadly weapon with intent to do great bodily harm, the character of the weapon may be inferred from the wounds or other indicia, if shown by the evidence, though the name or precise character of the instrument cannot be proved.—State v. Jukanovich, Utah, 146 Pac. 289.

10. **Assignments**—Equity.—Order on owner by building contractor after abandonment of contract and when there was nothing due him under the contract held to give the holder of the order no lien by way of equitable assignment.—National Surety Co. v. Price, Ky., 172 S. W. 1072.

11. **Attorney and Client**—Contract.—Where M, a law partner of G, who was under contract to clear title to land in consideration of B paying the costs and the owner deeding a two-thirds interest to the other two, became an attorney for the parties to the contract, he could purchase the interest of the owner subject to the contract.—Morris v. Brown, Tex., 173 S. W. 265.

12. **Bailment**—Revocation.—The delivery of a dog into defendant's possession by plaintiff with consent of his wife, the owner thereof, created at most a bailment at will, revocable without demand or notice, at the pleasure of the bailor.—Herries v. Bell, Mass., 107 N. E. 944.

13. **Bankruptcy** — Accruing Rent. — Under Bankr. Act, §§ 57d, 63a (1), a bankrupt's landlord, under Ky. St. § 2317, held entitled to a lien on the bankrupt's assets for a year's rent accruing from the date of the bankruptcy proceedings, less credits for payments in reduction of the loss.—Courtney v. Fidelity Trust Co., U. S. C. C. A., 219 Fed. 57.

14.——Contempt.—Where a bankrupt obstinately refused to comply with an order requiring him to pay over withheld assets to the trustee, it was the court's duty to order his incarceration until the order was complied with, or until further order of the court.—In re Krichevsky, U. S. D. C., 219 Fed. 347.

15.——Creditor.—Purchaser of a claim after filing bankruptcy petition to create an additional creditor, held not a "creditor" who can be counted in making up the statutory number to sustain an involuntary petition.—Emerine v. Tarault, U. S. C. C. A., 219 Fed. 68.

16.——Equity of Redemption.—A void execution levy on the equity of redemption of an alleged bankrupt in mortgaged personal property, held not to diminish his estate or constitute a final disposition of his property, and hence was not an act of bankruptcy.—In re Moark-Nemo Consol. Mining Co., U. S. D. C., 219 Fed. 340.

17.——Evidence.—Reasonable cause to believe that a bankrupt was insolvent and intended a preference, used in Bankr. Act 1898, as amended by Act June 25, 1910, held not a mere suspicion, but knowledge of facts calculated to induce a belief in the mind of an ordinarily intelligent man.—Beall v. Bank of Bowden, U. S. D. C., 219 Fed. 316.

18.——Exemption.—Whether an alleged bankrupt was chiefly engaged in farming, and therefore exempt from involuntary bankruptcy adjudication, must be determined as of the time when he committeed the act of bankruptcy charged.—In re Disney, U. S. D. C., 219 Fed. 294.

19.——Injunction.—Requested modification of injunction restraining officers of bankrupt corporation and their wives from withdrawing deposits held erroneously refused for failure of petitioning creditors to deny individual ownership of deposit or to make any showing of corporation's interest therein.—In re McGinley, U. S. C. C. A., 219 Fed. 159.

20.——Lien.—The Bankruptcy Act does not avoid a lien for labor preserved and enforced by legal proceedings, where it attached more than eight months before proceedings in bankruptcy.—Tube City Min. & Mill. Co. v. Otterson, Ariz., 146 Pac. 203.

21.——Secured Creditor.—A creditor, holding bankrupt's indorsed note for part of claim, held entitled to dividend on the full claim, though indorser paid the note after proofs of claim were filed; it not being a "secured creditor," under Bankr. Act, § 1, cl. 23, and section 57h.—Young v. Gordon, U. S. C. C. A., 219 Fed. 168.

22. **Boundaries**—Construction.—A line described as running along the top of a hill down a creek, held to run with the hill only so far as it ran parallel with the creek, and not to encircle the watershed of a tributary of the stream.—Burchett v. Clark, Ky., 172 S. W. 1048.

23. **Brokers**—Fraud.—Where a vendor agreed to pay a broker a commission with knowledge that the broker was already employed by the purchaser and without the purchaser's assent, the agreement was in fraud of the rights of the purchaser.—Whitney v. Bissell, Ore., 146 Pac. 141.

24. **Carriers of Goods**—Contracts.—If the carrier has filed its schedule of rates under Interstate Commerce Act, § 6, the parties are bound by a contract made thereunder, limiting the carrier's liability; otherwise its validity depends on the value being declared for a proper lower rate.—Adams Express Co. v. Cook, Ky., 172 S. W. 1096.

25.——Pleading.—In an action for damages by rain to dry corn during transport answer alleging that the corn was shelled while too green, and was shipped in a green and unripe condition, held only a denial of the petition and to raise no new issue.—St. Louis, B. & M. Ry. Co. v. Evans, Tex., 173 S. W. 228.

26. **Carriers of Live Stock**—Burden of Proof.—Where cattle delivered in good condition for transit reached their destination after delay in an injured condition, the burden is on the railroad to excuse the delay to escape liability.—Rodgers v. Texas & P. Ry. Co., Tex., 172 S. W. 1117.

27.——Defect in Cars.—A contract for the interstate transportation of live stock, which declares that the carrier is not responsible for loss from defect in cars, and that the rate is lower than at the carrier's risk, is within the Carmack Amendment and valid.—Thomas Bros. v. St. Louis & S. F. R. Co., Mo., 173 S. W. 9—.

28.——Unreasonable Delay.—In the transportation of live stock, unreasonable delays at points en route wholly unexplained raise a prima facie inference of negligence sufficient to take case to the jury.—Hunt v. St. Louis, I. M. & S. Ry. Co., Mo., 173 S. W. 61.

29. **Carriers of Passengers**—Calling Stations.—The announcement of a station in an audible voice in the coach in which a passenger is riding, so that it can be heard by those paying attention and possessed of the ordinary sense of hearing, is sufficient notice of the arrival at the station.—Missouri, K. & T. Co. of Texas v. Middleton, Tex., 172 S. W. 1114.

30.——Negligence.—Agent of defendant transfer line having ticketed plaintiff and her party, held negligent either in permitting them to enter the machine of a rival company, from which plaintiff was thrown and injured or, after seeing that they had done so, in failing to notify them of their mistake.—Denker Transfer Co. v. Pugh, Ky., 173 S. W. 139.

31.——Passenger Defined.—Where a person who boarded a car had not become a passenger, it was not negligence for the conductor to start the car before the person had an opportunity to reach a position of safety.—Wheeler v. Boston Elevated Ry. Co., Mass., 107 N. E. 938.

32.——Passenger Defined.—One riding in a caboose under agreement with the conductor, in consideration of assisting in loading and unloading freight, is a passenger.—Chesapeake & O. Ry. Co. v. Smith, Ky., 172 S. W. 1088.

33. **Commerce**—Servant.—A fireman on a switch engine, held not engaged in interstate commerce within the Employer's Liability Act, though he was hauling coal which might be used on engines used in transporting interstate commerce.—Parker v. Kansas City, M. & O. Ry. Co., Kan., 146 Pac. 358.

34. **Constitutional Law**—Eight Hour Law.—It will not be presumed that subsequent eight-hour laws were intended to apply to existing special contracts for extra work by a city employe, and thereby raise a constitutional question.—Woods v. City of Woburn, Mass., 107 N. E. 985.

35.——Motion to Quash.—One convicted under an unconstitutional statute may attack the statute by motion to quash the execution issued to collect the fine imposed.—State v. Finley, Mo., 172 S. W. 1162.

36. **Contracts**—Cancellation.—A law partner, buying the interest of an owner of land having a contract with the attorney's partner and others to deed a portion of the land upon clearing the title, held not to have the right to cancel the contract as to one, because the other refused to further prosecute the case.—Morris v. Brown, Tex., 173 S. W. 265.

37.——Implied Promise.—A statement by the owner of a building to a subcontractor that he would pay the bills and look to the contractor's sureties, held sufficient to raise an implied promise to pay the contract price.—Schade v. Muller, Ore., 146 Pac. 144.

38.——Mutuality.—A promise by mortgagee to accept payment of the mortgage before due, held not lacking in mutuality after tender of performance by the mortgagor.—Wallace v. Workman, Mo., 173 S. W. 35.

39.——Reasonable Time.—A property owner, who procured a release of claims on it on agreement to pay the releasor a portion of the proceeds of the property, held bound to sell within a reasonable time if having an opportunity.—Simon v. Etgen, Ky., 107 N. E. 1066.

40. **Corporations**—Authority of Agent.—Under votes of directors of corporation, stockholder held acting for it in purchasing lumber for alterations in stores in a building, though it had leased the part of the building used as a hotel to

such stockholder.—Boyce v. Campbell, Wash., 146 Pac. 158.

41.——Equity Rules.—Equity rule 27 (198 Fed. xxv, 115 C. C. A. xxv) does not require a formal request by a stockholder that the corporation sue in every case in order to entitle the stockholder to sue; the court being authorized to determine from the facts whether such a request would have been futile.—Dana v. Morgan, U. S. D. C., 219 Fed. 313.

42.——Inspection of Books.—The common-law right of inspection by a stockholder is a qualified, and not an absolute, right, and its enforcement is discretionary with the court.—Butler v. Martin Mfg. Co., Mass., 107 N. E. 999.

43.——Stock Corporation Law.—A chattel mortgage executed by a corporation without the consent of stockholders as required by Stock Corporation Law N. Y. § 6, held void and could not be ratified by subsequent action or inaction of the stockholders.—In re Post & Davis, U. S. C. C. A., 219 Fed. 171.

44. **Criminal Law**—Admissions.—Admission of sexual intimacy between accused and W held not a confession of adultery alleged to have been committed between them on a specified date, for which accused was informed against and was being tried.—State v. Sheffield, Utah, 146 Pac. 306.

45. **Damages**—Excessive.—Verdict of $2,500 for injuries to railway freight conductor, causing epileptic fits to increase in frequency and severity, weakening his mentality, impairing his sight and hearing, etc., held not excessive.—Louisville & N. R. Co. v. Winkler, Ky., 173 S. W. 151.

46. **Death**—Pleading.—A petition, in an action for death accruing in another state, is not demurrable for failure to allege that the common law was in force in that state; the Missouri law applying in the absence of such allegation.—Baker v. St. Louis & S. F. R. Co., Mo., 172 S. W. 1185.

47.——Proximate Cause.—A jury may not speculate between several causes of an accident, and find that defendant's negligence was the real cause of decedent's death, in the absence of a satisfactory foundation therefor in the testimony.—Crucible Steel Forge Co. v. Moir, U. S. C. C. A., 219 Fed. 151.

48. **Dedication**—Recorded Plat.—That a recorded plan contains no subdivision of a part of the land into lots is not decisive that that part was to remain public, but the intention of the owner as to it is to be gathered from all the circumstances.—Hobart v. Towle, Mass., 107 N. E. 954.

49. **Disorderly House**—Information.—Where the prosecution is for keeping a house of ill fame, the information need not allege the names of those charged to have indulged in illegal practices there.—City of Poplar Bluff v. Meadows, Mo., 173 S. W. 11.

50. **Domicile**—Acquirement of.—Where a lunatic was sent to a sanitarium in Maryland, he did not thereby lose his previously acquired domicile in Kentucky.—Sumrall's Committee v. Commonwealth, Ky., 172 S. W. 1057.

51. **Easements**—Abutting Owners.—A city acquiring an easement for a street may, in the absence of statute to the contrary, construct a subway in the street without becoming liable to abutting property owners required to remove appurtenances in the street.—Peabody v. City of Boston, Mass., 107 N. E. 952.

52. **Eminent Domain**—Irrigating Ditch.—Owner of land having thereon an excavation for an irrigating ditch on condemnation for a ditch held entitled to the market value of the land considered with reference to present uses for which in such condition it was available.—Scurvin Ditch Co. v. Roberts, Colo., 146 Pac. 233.

53.——Municipal Corporation.—Under Const. art. 1, § 17, where private property has been damaged by a city's negligence in building an insufficient sewer, the charter requirements of notice of defects and of claim for damages are not applicable to prevent recovery.—Shows v. City of Dallas, Tex., 172 S. W. 1137.

54.——Servient Tenement.—The owner of a servient tenement, over which one-half of a private footpath had been granted to others, to be used for all purposes for which such passageways are commonly used, had no right to arch over its half of the path.—Institution for Savings in Newburyport v. Town of Brookline, Mass., 107 N. E. 939.

55. **Exchange of Property**—Tender of Performance.—Where performance was tendered by second party before first party withdrew a contract to exchange property, provided the second party could complete the deal, the contract was mutually binding.—Ramey v. Thorson, Kan., 146 Pac. 315.

56. **Executors and Administrators**—Distribution.—A decree for the distribution of an intestate estate should determine the exact amounts which each distributee should receive to make the entire distribution, including advancements, conform to the law.—Case v. Clark, Mass., 107 N. E. 936.

57.——Res Judicata.—The approval of the account of an administratrix held not res judicata as to loans made by her to a distributee, not reported in the account, but which she subsequently agreed to treat as advancements.—Case v. Clark, Mass., 107 N. E. 936.

58. **Explosives**—Proximate Cause.—The owner of solidified glycerine is liable for all the natural and probable consequences from any breach of his duty to exert the highest degree of care to keep it in close custody and prevent it from doing mischief.—Clark V. E. & Du Pont de Nemours Powder Co., Kan., 146 Pac. 320.

59. **Factors**—Option.—A contract between a warehouse company and a broom corn company construed, and held to bind the latter to fix prices at which the former could sell and earn a commission, and not to be an option or agency revocable at will.—Meyer-Bridges Co. v. American Warehouse Co., Kan., 146 Pac. 361.

60. **Frauds, Statute of**—Interest in Land.—A parol contract that defendant should live on land of plaintiff, build a house, pay taxes, and that after the land had become valuable it should be sold, and the profits divided, was insufficient to give defendant an interest in the land itself.—Snover v. Jones, Tex., 172 S. W. 1122.

61.——Tenant at Will.—One entering tenements under an oral agreement, void under the statute of frauds, became a tenant at will, under Rev. Laws, c. 127, § 3, and the terms of the oral agreement became binding.—Flanagan v. Welch, Mass., 107 N. E. 979.

62. **Fraudulent Conveyances**—Evidence.—The fact that a husband and wife kept no strict account of money lent by the wife to her husband is not an evidence of fraud, to invalidate a transfer of property in repayment.—English v. Brown, U. S. D. C., 219 Fed. 248.

63.——Pre-existing Debt.—A creditor may receive property for his debt if not more than reasonably sufficient to discharge it; but, where the value materially exceeds the debt, the transaction is fraudulent in law.—Coughran v. Edmondson, Tex., 172 S. W. 1106.

64. **Garnishment**—Custodia Legis.—In the absence of statutory authority, funds deposited with a state treasurer by an insurance company, in trust for the policy holders, are in custodia legis and not subject to garnishment.—Oglesby v. Durr, Tex., 173 S. W. 275.

65. **Good Will**—Contract.—A contract binding the seller to contract no house moving for the next ten years, reasonably construed, bound him merely to refrain for ten years from competing with the purchaser, and therefore was not unreasonable.—Fox v. Barbee, Kan., 146 Pac. 364.

66.——Expense to Garnishee.—Where cars in possession of a railroad, were attached in trustee process, the trustee was not to be subjected to the expense of unloading and redistribution of cars or to their collection and retention to await the result of the litigation.—Koontz v. Baltimore & O. R. Co., Mass., 107 N. E. 973.

67. **Guaranty**—Liability.—A guarantor, to escape liability because of insolvency of the debtor at the time of notice of a clerical error in the statement of the amount due, must show that he has lost a pecuniary advantage against his debtor.—Barber Asphalt Paving Co. v. Mullen, Mass., 107 N. E. 978.

68. **Indictment and Information**—Evidence.—That accused was informed against and had a preliminary examination for alleged adultery committed August 23, 1913, did not prevent the state at the trial from relying for a conviction on a prior separate act committed between the same parties on the 16th of the same month within the venue and jurisdiction of the court.—State v. Kimball, Utah, 146 Pac. 313.

69.——Insufficiency.—Under information charging assault with intent to murder, verdict finding accused guilty of assault with deadly weapon, as charged in the information, with no finding that it was with intent to do bodily harm, held insufficient to support a conviction, under Comp. Laws 1907, § 4195.—State v. Jukanovich, Utah, 146 Pac. 289.

70. **Injunction**—Interest in Controversy.—A telephone company has no such interest in the establishment of a second telephone company in a competitive field as authorizes it to enjoin a rival for not holding a license from the Public Utilities Commission, under Laws 1911, c. 238, § 31.—Baxter Telephone Co. v. Cherokee County Mut. Telephone Ass'n, Kan., 146 Pac. 324.

71. **Insurance**—Accident.—An accident policy, stipulating for payment for loss of a hand by removal at or above the wrist, makes insurer liable where insured's hand, by reason of an accident, was amputated, except a part which was practically worthless.—Moore v. Aetna Life Ins. Co., Ore., 146 Pac. 151.

72.—Disability.—A health policy providing for indemnity for disability from illness imposes on insurer liability for each disability from illness, though produced by the same cause.—Bolton v. Inter-Ocean Life & Casualty Co., Mo., 172 S. W. 1187.

73.——Insurable Interest.—Where the nature of a claim giving no insurable interest to a building is material to the risk on goods in such building, failure by insured to disclose the nature of his claim to the building will avoid the policy as to the goods.—Niagara Fire Ins. Co. v. Layne, Ky., 172 S. W. 1090.

74.——Liability of Agent.—Where an insurance broker undertook to keep properties insured and after expiration of the policies neglected to secure new policies for a period during which the property was destroyed by fire, he was liable for the loss.—Diamond v. Duncan, Tex., 172 S. W. 1100.

75.——Mutual Interest.—In an action for a premium on a fire policy, testimony that a third person had filed a lien on the property and had foreclosed is held competent to show the relations of the parties and their mutual interest in the property.—Lamb v. Connor, Wash., 146 Pac. 174.

76.——Proofs of Loss.—Such grounds of objection to the proof of loss as were not specifically set out by the company to the insured were waived by it as to be unavailable in defense of an action on the policy.—Niagara Fire Ins. Co. v. Layne, Ky., 172 N. W. 1090.

77.——Storing Gasoline.—Gasoline was not "stored," within the terms of an insurance policy, by the keeping of a small quantity thereof in a closed retainer for occasionally cleaning wearing apparel.—Hanover Fire Ins. Co. v. Eisman, Okla., 146 Pac. 214.

78.——Transfer of Policy.—An insurance policy is not an independent right of property that can be transferred apart from the notes it is given to secure, so that one person can hold the policy and another the notes.—Stone v. Sargent. Mass., 107 N. E. 1014.

79. **Judgment**—Res Judicata.—The defense of res judicata as to the validity of an usurious mortgage debt is not personal to the mortgagor and his privies under the judgment, but is available to his privies in the estate by purchase prior to the judgment.—De Watteville v. Sims, Okla., 146 Pac. 224.

80. **Landlord and Tenant**—Common Stairway.—Landlord, reserving control of a common stairway, intending it to be used by tenants, held liable for negligence in not keeping it in the repair it was in at the time of letting it for persons rightfully using it.—Fitzsimmons v. Hale, Mass., 107 N. E. 929.

81.——Damages.—Under oral agreement that the landlord should keep a stairway in safe condition, landlord's negligence therein entitled tenant, suffering injury therefrom, to recover, notwithstanding the landlord was not in control of it.—Flanagan v. Welch, Mass., 107 N. E. 979.

82.——Destruction by Fire.—For a fire, during a second term, the lessee is not liable, if caused by faulty construction of a cookroom, built by him during his first term, and at its end becoming the lessor's property, but only if caused by his negligent manner of use.—Bentley v. Ballard & Herring, Ky., 172 S. W. 1079.

83.——Liability.—Where the child of a lessee cut a rope holding up a dumb-waiter, and the waiter fell to the cellar, killing the child, the landlord was not liable, though the rope had been tied in an improper place.—Shea v. McEvoy, Mass., 107 N. E. 945.

84. **Licenses**—Telephone Company.—A telegraph company furnishing messengers to customers held engaged in the messenger business within an ordinance imposing an annual license fee and requiring a bond conditioned on the faithful carrying on of the business.—City of Portland v. Western Union Telegraph Co., Ore., 146 Pac. 148.

85. **Master and Servant**—Control.—Liability of master, lending or hiring his servant to work for another for some special service, for injuries to third persons, held to depend upon whether master continued in control and direction of servant as to means and result, or whether he became subject to the control of such other persons.—Tornroos v. R. H. White Co., Mass., 107 N. E. 1015.

86.——Discovery of Defects.—Where a petition did not allege how defendant could have obtained, as alleged, knowledge of the defective character of a locomotive, proof that the hydrostatic test would have disclosed such knowledge was admissible.—National Ry. of Mexico v. Ligarde, Tex., 172 S. W. 1140.

87.——Fellow Servants.—In action for injury to employe of subcontractor engaged in finishing hotel of which defendant was lessee and injured through the negligence of its elevator boy, held that the employe and the elevator boy were not fellow servants.—Gardner v. Copley-Plaza Operating Co., Mass., 107 N. E. 1000.

88.——Fellow Servant.—A ditch digger injured when rocks and earth he had thrown out rolled back into the ditch, held not entitled to recover against the master; the negligence being that of his fellow servant, the top man.—Pippin v. Will F. Plummer Const. Co., Mo., 172 S. W. 1191.

89.——Hours of Service Law.—Where a railroad operator was subject to call during meal hours, he was "on duty" during that time, within the Hours of Service Law.—United States v. Chicago & N. W. Ry. Co., U. S. D. C., 219 Fed. 342.

90.——Police Power.—The act of Arizona adopted November 3, 1914, relative to employment of citizens in preference to aliens, held not a valid exercise of the police power of the state.—Raich v. Truax, U. S. D. C., 219 Fed. 273.

91.——Rules.—Where all of defendant's employes were furnished with a book of rules, and deceased was seen to have a book in his possession similar to the book of rules, rules contained in the book were admissible.—Robichaud v. New York, N. H. & H. R. Co., Mass., 107 N. E. 975.

92.——Workmen's Compensation Act.—Negligence on the part of an injured servant and assumed risk are no bar to recovery, where master has elected not to be bound by the Workmen's Compensation Act, Ohio, § 21—1.—Crucible Steel Forge Co. v. Moir, U. S. C. C. A., 219 Fed. 151.

93. **Mines and Minerals** — Leases.—Mining leases granting an exclusive right to extract and remove ore for practically unlimited times are in reality sales of the ore, and the royalties reserved are the purchase prices thereof.—Von Baumach v. Sargent Land Co., U. S. C. C. A., 219 Fed. 31.

94.——Possession of Surface.—Possession of the surface of land is not adverse to the title

to the coal thereunder, where the estate in the coal has been severed as to title.—Shrewsbury v. Pocahontas Coal & Coke Co., U. S. C. C. A., 219 Fed. 142.

95. **Mortgages**—Law of Place.—Where an owner of incumbered land in Missouri exchanged it for land in Colorado, which was conveyed by deed absolute in form to the holder of the incumbrance, the rights of the parties are governed by the laws of Colorado.—Hawkins v. Elston, Colo., 146 Pac. 254.

96.——Rents and Profits.—The law does not apply the rents and profits received by a mortgagee in possession to the payment of the mortgage, and such application depends upon an accounting on equitable principles.—Reich v. Cochran, N. Y., 107 N. E. 1029.

97. **Municipal Corporations**—Debt.—Where a municipality had power to borrow money to move a pumping plant from one place to another, it could give appropriate acknowledgments of the debt.—Forrest City v. Bank of Forrest City, Ark., 172 S. W. 1148.

98.——Proximate Cause.—Where plaintiff, on the sidewalk, was injured by a cow negligently released from a car in consequence of a wreck caused by improper switching, held that the railroad company was liable; its negligence being the proximate cause of the injury.—Hartman v. Atchison, T. & S. F. Ry. Co., Kan., 146 Pac. 335.

99.——Repair of Streets.—A public road within a town's corporate limits, though in a part of it not occupied by buildings, is a street to be repaired by it, and not by the county.—Letcher County v. Town of Whitesburg, Ky., 172 S. W. 1041.

100. **Novation**—Suit.—A creditor receiving in payment of his debt stock, and retaining it at the request of the debtor's agent, and finally returning it for non-performance of conditions, could sue on the debt.—Clarke Woodward Drug Co. v. Hot Lake Sanitarium Co., Ore., 146 Pac. 135.

101. **Parent and Child**—Negligence.—Person shot through negligence of 16 year old boy, held not entitled to recover from the boy's parents, who neither aided, abetted, nor suggested any of the acts relied upon.—Herndobler v. Rippen, Ore., 146 Pac. 140.

102. **Principal and Agent**—Ratification.—Where plaintiffs employed an attorney to secure from defendant a transfer of an oil lease, and the attorney did so, and plaintiffs, without the knowledge of the defendant, refused to accept it, except on modified terms, they cannot deny an acceptance of the transfer.—Stallings v. Carpenter, Ky., 172 S. W. 1063.

103.——Repudiation.—Where an agent fraudulently induces his principal to authorize the purchase of certain stock and procures and delivers other stock, the principal on learning the facts may offer to return the stock to the agent and recover the amount paid the agent.—Gillies v. Linscott, Kan., 146 Pac. 327.

104. **Public Lands**—Preference Right.—Under Laws 1903, p. 22, §§ 4, 5, and Rem. & Bal. Code §§ 6605, 6750, improver of tidelands held not to have lost preference right to purchase them, though application based his right on the ownership of the contiguous uplands, and his statement, claiming as an improver, was not filed within the statutory 60-day period.—Book v. West, Wash., 146 Pac. 167.

105.——Trespass.—Under Act Feb. 25, 1885, § 3, the owner of a large quantity of land, the sections alternating with sections of public land and the entire tract being uninclosed, held without right by notice to render a stockowner liable in trespass for crossing such tract with his stock.—Mackay v. Uinta Development Co., U. S. C. C. A., 219 Fed. 116.

106. **Railroads**—Estoppel.—A city employe who accepted increased wages for working ten hours under a special agreement cannot thereafter recover on quantum meruit for the time he worked in excess of the eight hours permitted by law.—Woods v. City of Woburn, Mass., 107 N. E. 985.

107.——Invitee.—A public weigher who was injured while attempting to enter a car to get some cotton delivered to the railroad by mistake, held to be an invitee of the railroad.—Missouri, K. & T. Ry. Co. of Texas v. Kinslow, Tex., 172 S. W. 1124.

108.——Public Policy.—An interstate railroad's possession of freight cars of another interstate railroad for use as part of its own equipment while they remained in its possession, held not to violate any rule of public policy.—Koontz v. Baltimore & O. R. Co., Mass., 107 N. E. 973.

109. **Sunday**—Completed Gift.—A gift, complete in itself and involving no element of labor, business, work, or contract, held not violative of Rev. Laws, c. 98, though made on Sunday.—Herries v. Bell, Mass., 107 N. E. 944.

110. **Taxation**—Domicile.—Where a lunatic was sane up to 1905, when he was sent by his father to a sanitarium in Maryland, his committee cannot by an election to claim him domiciled in Maryland, escape liability for taxes on his estate in Kentucky.—Sumrall's Committee v. Commonwealth, Ky., 172 S. W. 1057.

111. **Trade Marks and Trade Names**—Infringement.—Sale of substance similar to that manufactured by complainant under the tradename "Listerseptine" held an infringement of complainant's registered trade-mark "Listerine."—Lambert Pharmacal Co. v. Kalish Pharmacy, U. S. D. C., 219 Fed. 323.

112.——Unfair Competition.—"Listogen" held not descriptive by suggestion so as to be properly applied to a compound similar to that sold under the name "Listerine."—Lambert Pharmacal Co. v. Bolton Chemical Corporation, U. S. D. C., 219 Fed. 325.

113. **Trover and Conversion**—Enticement.—Where plaintiff, with consent of his wife, had possession of her dog, and defendant enticed the dog away and detained it under a claim of ownership, plaintiff could sue for conversion.—Herries v. Bell, Mass., 107 N. E. 944.

114. **Vendor and Purchaser**—Rescission.—One induced to buy fruit orchard by false representation as to the returns therefrom, held put upon inquiry as to the falsity of the representations, and not entitled to rescind when he offered to rescind the third year after the purchase.—Whitney v. Bissell, Ore., 146 Pac. 141.

115. **Waters and Water Courses**—Appropriation.—As between appropriators of water for direct irrigation only, the prior appropriator may not divert, to storage, water, which it could use for direct irrigation, but cannot because of the physical condition of its ditch, so use.—Greeley & Loveland Irr. Co. v. Farmers' Pawnee Ditch Co., Colo., 146 Pac. 247.

116.——Definition.—A "water course" is a stream having beds and banks and a periodical flow, though the waters need not at all times flow between the banks, for, even if it spread out over land so as to make it swampy, yet, if it kept on in a general course over plaintiff's land, defendant could not legally obstruct its escape.—Miller v. Eastern Ry. & Lumber Co., Wash., 146 Pac. 171.

117.——Right of Contract.—A city having no legislative power under Const. Art. 11, § 19, to require payment of a gross earnings tax as a condition to a water franchise, such tax could not be supported under the city's general power to contract.—Town of St. Helena v. Ewer, Cal., 146 Pac. 191.

118. **Wills**—Construction.—A will construed and held to vest the feel of land in testator's son at testator's death, with a postponement of enjoyment until the termination of a life estate, and to charge the fee, as to the son or his successors in interest, with payment of certain legacies.—Mastellar v. Atkinson, Kan., 146 Pac. 367.

119.——Incapacity.—Where a codicil was contested on ground of incapacity, evidence of a parol agreement made about 15 years before, that the testator would will the property to contestants, has no relevancy to the issues.—Gernert v. Straeffer's Ex'r, Ky., 172 S. W. 1044.

120. **Witnesses**—Cross-Examination.—Cross-examining accused's character witnesses, the state cannot, without ascertaining whether a witness knew of a certain person, read an affidavit by that person charging accused with another offense.—People v. Marendi, N. Y., 107 N. E. 1058.